

SERIAL 02039 -S

AZTECH TOOLBOX SOFTWARE MAINTENANCE

C6402132500
SERIAL 02039-S

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CONTRACT PERIOD THROUGH DECEMBER 31, 2005

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **AZTECH TOOLBOX SOFTWARE MAINTENANCE**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **January 16, 2002**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

CS/mm
Attach

Copy to: Clerk of the Board
Carl Jager, MCDOT
Dale Thompson, MCDOT
Carmen Ledesma, Materials Management

SPECIFICATIONS ON INVITATION FOR BID FOR: **AZTECH TOOLBOX SOFTWARE MAINTENANCE****1.0 INTENT:**

The intent of this contract is to award a sole source requirements contract for the generalized maintenance, support, and purchase of additional software as may be added under the scope of this agreement.

2.0 TECHNICAL SPECIFICATIONS:**2.1 CONSULTANT'S RESPONSIBILITIES**

- 2.1.1 Maintenance, General Support. The CONSULTANT agrees to maintain in good operating condition the AZTech™ Integration Software (known as TOOLBOX) and such additional Software as may be added under this agreement. The CONSULTANT's personnel shall furnish such Maintenance Services and will be responsive to the COUNTY's maintenance requirements after being notified by the COUNTY of its need for maintenance service. Where possible, Services shall be rendered via a data communications link between the COUNTY's specified sites and the CONSULTANT's place of business.

The CONSULTANT agrees to provide generalized maintenance support including support via telephone, Email, or on-site.

Telephone Support: The CONSULTANT will provide support to the COUNTY and other authorized AZTech™ Program Partners via telephone for answering questions, solving problems, and/or correcting malfunctions, during regular business hours. Regular business hours are defined as 8:00 am (MST) to 5:00 pm (MST), Monday through Friday, excluding the CONSULTANT's holidays. A pager will be provided to reach the support individual when away from their home office. All pages or telephone calls will be returned within one (1) working day unless previously coordinated with the Buyer. All telephone support will be documented in telephone record log maintained by CONSULTANT. A copy of the log will be provided as part of the monthly invoice.

Email Support: The CONSULTANT will provide technical assistance to the Buyer and other authorized AZTech™ Program Partners for answering questions, solving problems, and/or correcting malfunctions, during normal business hours. Regular business hours are as defined above. All Emails will be acknowledged within one (1) working day of receipt, unless previously coordinated with the COUNTY. A summary of Email traffic shall be included in the monthly invoice.

On-Site Support: The COUNTY may request the CONSULTANT's personnel to support on-site resolution of problems or malfunctions. COUNTY requests may be issued to the CONSULTANT in the form of letter, telephone call, or Email but must be received by the CONSULTANT at least two (2) days in advanced of the desired date in order for individual to be on-site. A summary of all on-site activities will be included in the monthly invoice.

- 2.1.2 **Software Updates:** The CONSULTANT is not specifically required as a result of this agreement to continue development of the ToolBox software. However, in the event updates are developed for others, the CONSULTANT agrees to provide updates within the ToolBox software structure. The COUNTY will pay for the actual labor required to update its Toolbox version with any new capabilities developed for others that the COUNTY wants installed. Updates will require labor to add the new functionality to the COUNTY's baseline software and regenerate/install the new version on each AZTECH Workstation PC. Support for these updates will include continued Configuration Management of the AZTech™ software configuration, release to the COUNTY of available updates, compilation of software update media and documentation desired by the COUNTY, and general support for installation of the updates.

- 2.1.3 **Software Development and Upgrades:** The CONSULTANT agrees to provide support in the enhancement, upgrade, and modification of the ToolBox to provide the COUNTY additional capabilities. Technical and estimated costs of efforts to be accomplished will be specifically negotiated between the CONSULTANT and the COUNTY prior to initiation of software development/ modification. Support will include, but not be limited to, software design, software development, test, integration, configuration management, media preparation, and documentation preparation and publishing.
- 2.1.4 **TRW/AZTech Toolbox Software License:** TRW will provide to Maricopa County and the AZTech™ government partners an AZTech™ program license for the TRW Toolbox executable software (AZTech™ workstation software). This limited license will allow Maricopa County and the AZTech™ government partners to install and use the TRW executable software on an unlimited number of workstations as long as the workstations are included in the AZTech™ project within the State of Arizona.
- 2.1.4.1 To ensure short- and long- term capabilities of the TRW Toolbox software, TRW will provide the following support to Maricopa County and the AZTech™ public partners, as required, specified, and reimbursed under a Multi-year Task Order contract:
- 2.1.4.1.1 Availability of software programming support and staff, including Bill Green, for the purpose of providing maintenance, operations and upgrades for the TRW Toolbox software, as requested under a Task Order agreement.
- 2.1.4.1.2 TRW will place the TRW toolbox software source code used on the AZTech™ project in escrow with stipulation that the source code will be provided to Maricopa County and the AZTech™ public partners in the event TRW is no longer willing or available to support the TRW Toolbox software version for AZTech™. Maricopa County will reimburse TRW for all reasonable costs associated with the maintenance of the escrow account.

2.2 COSTS

In providing the above Services and Support to the COUNTY, the COUNTY shall reimburse the CONSULTANT:

- 2.2.1 An hourly rate of \$155 per hour for technical support. Labor for Telephone Support will be computed to the nearest one-half (1/2) hour. Labor for the On-Site support will be computed to the nearest one (1) hour with a minimum charge per on-site service call of eight (8) hours. Labor for all other support will be computed based on 1/10" hour increments.
- 2.2.2 An hourly rate of \$95 per hour for business/contracts support necessary to implement and monitor the status of the task orders issued under this agreement computed in 1/10th hour increments.
- 2.2.3 All costs and expenses incurred for travel, per diem, and Other Direct Costs billed at actual costs. No burden shall be added to these expenses.
- 2.2.4 These hourly rates shall be effective for one (1) year following execution of this agreement by both parties. After one year, the CONSULTANT shall have the right to reevaluate its rates and propose reasonable and appropriate changes.
- 2.2.5 Any requests for reasonable price adjustments must be submitted in writing to the Department of Materials Management no later than thirty (30) days prior to the one (1) contract execution date. Justification for the requested adjustment in cost of labor and/or materials must be supported by appropriate documentation. Increases are subject to approval in writing by the Materials Management Department prior to any adjusted invoicing being submitted for payment.

2.3 COUNTY's RESPONSIBILITIES

- 2.3.1 COUNTY Personnel. The COUNTY shall designate one or more appropriate and knowledgeable person(s) who shall provide the primary interface for CONSULTANT personnel to assure the expeditious execution of the work called for herein. This person(s) shall be empowered to request modifications or alterations of the services performed and shall be the person(s) to whom any communications relating to this Agreement and any performance hereunder may be directed.
- 2.3.2 Inspection and Review. Following the completion of any Maintenance Services on Software by the CONSULTANT, the COUNTY shall promptly and carefully inspect and review all required functions of the Software and shall identify any additional or continuing errors that require correction.
- 2.3.3 Access to Software. Upon receipt of the COUNTY notification of a requirement for the CONSULTANT to perform software maintenance services, the COUNTY shall allow the CONSULTANT full and free access to the Software during normal business hours.
- 2.3.4 Repair of Software. Except as provided in this Agreement, the COUNTY agrees not to repair or have repaired any faults or make any modifications or enhancements to the licensed Software by personnel other than those employed by the CONSULTANT.
- 2.3.5 Non-Authorized Modifications. If the COUNTY causes any alterations to be made to the licensed Software, the CONSULTANT may, at its sole discretion, select one of the following remedies:
 - 2.3.5.1 Upon written agreement with the COUNTY, modify the affected portions of the Software so as to return same to its original condition and charge the COUNTY an amount equal to the number of hours required to accomplish such remedies at the then current hourly rate.
 - 2.3.5.2 Exclude all affected Software from the terms and conditions of this Agreement with an appropriate written modification to this Agreement.

- 2.4 The Scope of Work for this contract consists of a set of Phase I, II, and III Work Categories and Subcategories (See Exhibit 1 – Scope of Work). At the conclusion of Phase I, MCDOT and AZTech™ partners will conduct a System Assessment in order to review AZTech™ system functionality and the degree of software optimization. Continuing work on, and compensation for, Phase II and Phase III is contingent upon the results of the System Assessment.

2.5 LATE PAYMENTS

The CONSULTANT may withhold services due under this Agreement in the event any payment due from the COUNTY is more than sixty (60) days delinquent without justification. Following receipt of the CONSULTANT's invoice, the COUNTY shall have ten (10) working days to review and provide notification of any CONSULTANT invoice errors. In the event that no errors are found, the CONSULTANT's invoice shall be due and payable thirty (30) days following receipt of the invoice. If invoice errors are found and timely notification of the error(s) is provided, payment of the CONSULTANT's invoice shall be due and payable thirty (30) days following the COUNTY's receipt of a corrected invoice. The CONSULTANT may terminate this Agreement if the COUNTY fails, without justification, to pay any amount due within fifteen (15) days after notice to the COUNTY that the same is sixty (60) days or more delinquent.

In the event of default by either party, the other party shall also pay all reasonable expenses incurred by the non-defaulting party in pursuing its remedies, including reasonable attorney's fees.

2.6 PERSONNEL

The CONSULTANT's Bill Green shall be assigned as the primary provider of Maintenance Services under this agreement. The CONSULTANT will take reasonable steps to maintain Bill Green in this primary provider role. However, in the event that he becomes unavailable to perform maintenance services under this Agreement, the CONSULTANT reserves the right to assign other qualified personnel to perform such Maintenance Services with the prior approval of Maricopa County.

2.7 EXCUSABLE DELAY

If the CONSULTANT is delayed or prevented from performing maintenance services under this Agreement by reason of any cause beyond its reasonable control, such as but not limited to, strikes, labor troubles, storms, war emergencies, fires, flood, water damage, acts of God or Government, or other similar circumstances, such delay shall be excused during the continuance of such causes. The CONSULTANT shall provide a written notice to the COUNTY of justification of the occurrence of any event constituting an Excusable Delay.

2.8 CONFIDENTIALITY

All written information submitted by either party to the other in connection with services performed or data and procedures available under this Agreement which are identified as proprietary information by the submitting party will be safe-guarded and be held confidential, as permitted by law, by the party to which it is submitted. If such data is publicly available or is rightfully obtained by either party from third parties said receiving party shall bear no responsibility for its disclosure, inadvertent or otherwise.

2.9 PATENTS

The CONSULTANT shall defend or settle at its own expense any claim, suit or proceeding brought against the COUNTY insofar as it is based on a claim that the product or any part thereof furnished under this Contract constitutes an infringement of a US patent, US copyright or trade secret rights of any third party located in the US, so long as the CONSULTANT is notified promptly in writing by the COUNTY as to any such action and is given full authority, information and assistance (at the CONSULTANT's expense) for defense or settlement thereof. This indemnification obligation does not extend to any claim, suit or proceeding based upon any infringement or alleged infringement by the combination of the product with other elements not under TRW's sole control, nor does it extend to any products altered by Maricopa County, either by enhancement or by combination with products of the County's design.

2.10 LIMITATION

EXCEPT AS SET FORTH IN THIS AGREEMENT, THE CONSULTANT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The CONSULTANT shall not be liable for any damages caused by delays in rendering performance hereunder arising from any of the causes specified in "Excusable Delays."

2.11 DISPUTES

Any dispute arising under this contract which is not disposed of by agreement by the parties will be settled according to the laws of the State of Arizona and/or the City of Phoenix.

2.12 INVALIDITY

The invalidity of any provision of this Agreement shall not affect the validity of the remainder of any such provision or the remaining provisions of this Agreement.

2.13 ASSIGNMENT

Neither party shall assign or transfer this Agreement without the written consent of the other.

2.14 NOTICES

Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated above in this Agreement or such other address as any hereafter be specified by notice in writing.

2.15 TAX:

No tax shall be levied against labor. Bid pricing includes all labor, overhead tools and equipment used, profit, and any taxes that may be levied. It is the responsibility of the Contractor to determine any and all taxes and include the same in bid price.

Prices specified herein exclude all applicable Arizona taxes. The COUNTY shall pay the gross amount of any present or future Arizona sales, use, excise, value-added, or other similar tax applicable to price, sale, or delivery of any product or service furnished hereunder, not covered by this exemption.

2.16 DELIVERY:

It shall be the Contractor's responsibility to meet the County's delivery requirements, as called for in the Technical Specifications. Maricopa County reserves the right to obtain services on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

3.0 **SPECIAL TERMS & CONDITIONS:**

3.1 CONTRACT LENGTH:

This contract is to award a firm, fixed price requirements contract to cover the period until December 31, 2005.

3.2 INQUIRIES AND NOTICES:

All inquiries concerning information herein shall be addressed to:

MARICOPA COUNTY
DEPARTMENT OF MATERIALS MANAGEMENT
ATTN: CONTRACT ADMINISTRATION
320 W. LINCOLN ST.
PHOENIX, AZ 85003

Administrative telephone inquiries shall be addressed to:

CORRY SLAMA, PROCUREMENT CONSULTANT, 602-506-3243
(cslama@mail.maricopa.gov)

Technical telephone inquiries shall be addressed to:

CARL JAGGER, MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, 602-506-4631

Inquiries may be submitted by telephone but must be followed up in writing. No oral communication is binding on Maricopa County.

4.0 **CONTRACT TERMS AND CONDITIONS:**

4.1 **LANGUAGE FOR REQUIREMENTS CONTRACTS:**

Contractors signify their understanding and agreement by signing this document, that the Contract resulting from this bid will be a requirements contract. However, this Contract does not guarantee any purchases will be made. It only indicates that if purchases are made for the services contained in this Contract, they will be purchased from the Contractor awarded that item. Orders will only be placed when a need is identified by a Using Agency or department and proper authorization and documentation have been approved.

The Department of Materials Management reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc.

Contractors agree to accept verbal notification of cancellation from the Department of Materials Management with written notification to follow. By submitting a bid in response to the Invitation For Bids, the Contractor specifically acknowledges to be bound by this cancellation policy.

4.2 **UNCONDITIONAL TERMINATION FOR CONVENIENCE:**

Maricopa County may terminate the resultant Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor.

4.3 **TERMINATION FOR DEFAULT:**

If the Contractor fails to meet deadlines, or fails to provide the agreed upon service/material altogether, a termination for default will be issued. The termination for default will be issued only after the County deems that the Contractor has failed to remedy the problem after being forewarned.

4.4 **TERMINATION BY THE COUNTY:**

If the Contractor should be adjudged bankrupt or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the County may terminate this Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of a substantial violation of any provision of this Contract, then the County may terminate this Contract. Prior to termination of this Contract, the County shall give the Contractor thirty (30) calendar days written notice. Upon receipt of such termination notice, the Contractor shall be allowed thirty (30) calendar days to cure such deficiencies.

4.5 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.6 OFFSET FOR DAMAGES;

In addition to all other remedies at Law or Equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from a material breach in performance under this contract.

4.7 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete services to this Contract. If a service requirement is deleted, payment to the Contractor will be reduced proportionately, to the amount of service reduced in accordance with the bid price. If additional services are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.8 SUBCONTRACTING:

The Contractor may not assign this Contract or Subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the Bid Serial Number and identify the job project.

The Subcontractor's rate for the job shall not exceed that of the Prime Contractor's rate, as bid in the pricing section, unless the Prime Contractor is willing to absorb any higher rates. The Subcontractor's invoice shall be invoiced directly to the Prime Contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the Subcontractor's invoice must accompany the Prime Contractor's invoice.

4.9 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.10 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions – not to exceed a period of ten (10) years total retention. The Department, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

4.11 ADEQUACY OF RECORDS:

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.12 AUDIT DISALLOWANCES:

If at any time it is determined by the Department that a cost for which payment has been made is a disallowed cost, the Department shall notify the Contractor in writing of the disallowance and the required course of action, which shall be at the option of the Department either to adjust any future claim submitted by the Contractor by the amount of the disallowance or to require repayment of the disallowed amount by the Contractor forthwith issuing a check payable to Maricopa County.

4.13 VALIDITY:

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

4.14 RIGHTS IN DATA:

The County shall have the use of data and reports which are deliverable under this Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder

NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORPORATION, TRW INC,
1900 FOUNDERS DRIVE #102, KETTERING, OH 45420-4011

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: ☒ YES ☐ NO

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: ☒ YES ☐ NO

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1.0 PRICING:

In providing the specified Services and Support to the COUNTY, the COUNTY shall reimburse the CONSULTANT:

An hourly rate of \$155 per hour for technical support. Labor for Telephone Support will be computed to the nearest one-half (1/2) hour. Labor for the On-Site support will be computed to the nearest one (1) hour with a minimum charge per on-site service call of eight (8) hours. Labor for all other support will be computed based on 1/10" hour increments.

An hourly rate of \$95 per hour for business/contracts support necessary to implement and monitor the status of the task orders issued under this agreement computed in 1/10th hour increments

All costs and expenses incurred for travel, per diem, and Other Direct Costs billed at actual costs. No burden shall be added to these expenses.

Total expenditure for all service covered under the contract shall not exceed: \$125,000 (FY'02); \$250,000(FY'03); \$250,000(FY'04); \$125,000 (1st half of FY'05)

Terms:	NET 30
Federal Tax ID Number:	34-0575430
Vendor Number:	340575430 A
Telephone Number:	937/259-4511
Fax Number:	937/259-4885
Contact Person:	Dennis W. Nixon
E-mail Address:	dennis.nixon@trw.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending December 31, 2005.